

JERSEY / JUDGMENT

AG -v- Diogo [2014] JRC 153 (01 August 2014)

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JUDGMENT

THE commissioner: 1. The defendant stands to be sentenced for two counts of importing and two counts of possession with intent to supply illegal drugs known as new psychoactive substances ("NPS") which he purchased on the internet and had posted to his home address in Jersey. The drugs seized weighed some 393 grams and had a street value of £7,845. The defendant, who is 33 years of age, has been a cannabis user since he was 15 and the great majority of the drugs which were imported were for his personal use, although he would give some to his brothers and friends. 2. The defendant has been convicted previously of cultivating cannabis (March 2011) for which he was fined and in January 2013 he was formally warned about importing drugs after Customs and Immigration had intercepted a padded envelope which was found to include illegal substances. 3. The Prosecution have referred us to a number of previous decisions involving NPS's and young males who have ordered them over the internet, namely AG-v-L'Enfant

[2013] JRC 169 , AG-v-Fage and Romeril

[2014] JRC 114 , AG-v-Crabtree

[2013] JRC 196 , AG-v-Moody

[2012] JRC 183 and AG-v-Sanguy

[2012] JRC 170A from which we would extract the following principles:- (i) Trafficking in Class B drugs is a serious offence. The legislation has placed upon it a maximum sentence of 14 years; (ii) At levels which might attract the imposition of the Campbell v AG

[1995] JLR 136 guidelines (the category C guidelines start at 1-10 kilograms which would attract a starting point of 2-6 years before mitigation is applied), the policy of the Court will be to pass very significant sentences. There is a question whether the Court will actually apply the guidelines themselves for the reasons explained by the Court in AG-v-L'Enfant ; (iii) At levels which are below the Campbell guidelines the starting point remains a custodial sentence. As the Court said in AG-v-Sanguy:- "The policy of this Court is well established in relation to the importation/supply of drugs. It is that a prison sentence will almost invariably follow. But the Court has made exceptions in respect of Class B drugs where

comparatively small amounts are involved and where there is exceptional mitigation." 4. This case falls below the Campbell guidelines but the starting point remains a sentence of imprisonment. 5. The defendant is assessed at a moderate risk of reconviction which will reduce if he continues to be cannabis free as he has been since March of this year. In the light of the mitigation available to the defendant and the circumstances of this case, the Prosecution feel able to move for a non-custodial sentence, namely 240 hours' Community Service, an 18 month Probation and a 12 month Treatment Order. 6. In terms of mitigation the defendant says that this experience has been a wake-up call for him and he is now motivated to cease using illegal drugs once and for all. And as we said earlier he has been abstinent now from March of this year and there are grounds for optimism in that the defendant has a good work record and he is full time employment; he is obviously anxious not to jeopardise that. He has also been in a long-term relationship for some 7 years with a partner who we can see is in Court and who does not condone drug use. The Probation Department have spoken to her and she has seen a considerable improvement in the defendant since he has ceased using drugs. He has, of course, pleaded guilty and been cooperative with the authorities and we have received a number of good references and a letter of remorse. We do accept that the defendant's remorse is genuine. 7. We therefore think that the conclusions of the Crown are correct. This is a serious offence requiring punishment but that punishment is best served in the community through community service with the defendant being assisted by both the Probation Department and the Alcohol and Drug Services in maintaining his abstinence from drugs, which have been a habit now since an early age. 8. Mr Diogo, we need to make it clear to you however and must warn you very clearly that you have had one warning already, that was in January 2013, you have come very close to the line today. If you do this again you will almost certainly go to prison and there will be a possibility also of your deportation being recommended. So this really is the last chance, I hope you understand that. 9. In relation to Count 1 you are sentenced to 180 hours' Community Service, which is the equivalent to 12 months' imprisonment. Count 2; 180 hours' Community Service, which is equivalent to 12 months' imprisonment, Count 3; 240 hours' Community Service, which is equivalent to 18 months' imprisonment, and Count 4; 240 hours' Community Service, which is the equivalent to 18 months' imprisonment, all to be concurrent with each other, which gives a total of 240 hours' Community Service which is the equivalent of 18 months' imprisonment. You will also serve on each count, but concurrent with each other, an 18 month Probation Order and in addition to the usual conditions, you will be subject to a Treatment Order with the Alcohol and Drug Service which will involve, and which you accept, monitoring and drug testing over a period of 12 months. 10. We also order the forfeiture and destruction of the drugs. Authorities AG-v-L'Enfant

[2013] JRC 169 . AG-v-Fage and Romeril

[2014] JRC 114 . AG-v-Crabbtree

[2013] JRC 196 . AG-v-Moody

[2012] JRC 183 . AG-v-Sanguy

[2012] JRC 170A . Campbell v AG

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